IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SIDE JURISDICTION
CRIMINAL APPLICATION NO.3441 OF 2006

Hemant C. Patel ...Applicant.
V/s.
State of Maharashtra & Anr. ...Respondents.

Shri Piyush Shah, adv. for the Applicant.

Shri R.D.Dave i/b M/s.N.N.Vaishnemeto, advs. for the Respondent No.2.

CORAM: J.H.BHATIA, J.
DATE : 16th April, 2007.

P.C.:

1. This is an application seeking leave to prefer appeal against the acquittal for the offence punishable under Section 138 of the Negotiable Instruments Act.

2. Heard Mr.Shah the learned counsel for the applicant. Perused the record and the impugned judgment. It is revealed that the respondent had issued a cheque in favour of the applicant, which was presented to the bank for encashment on 1-10-2003. For the first time it was dishonoured for want of funds. However, it was presented again on 14-10-2003 but then the cheque was returned with endorsement 'Account closed'. Thereafter the applicant issued a notice dated 17-10-2003 to the respondent but the notice was actually issued on 22nd October, 2003 and the respondent got the

notice or intimation of the notice dated 23-10-2003. He accepted to make the payment within 15 days which he did not. Period of 15 days expired on 7-11-2003. The complaint was filed on 8-12-2003 and while verification statement was recorded on 9-12-2003. The learned Magistrate held that the complaint was barred by the limitation.

3. Taking into consideration the facts it is clear that stipulated period of 15 days for making the payment came to an end on 7-11-2003 and excluding that date, the applicant could file a complaint within one month beginning from 8-11-2003 and this period would come to an end on 7-12-2003. So the complaint could be filed on or before 7-12-2003, while it was actually filed on 8-12-2003, that is beyond the period of limitation. In these circumstances, I find no fault in the impugned order of acquittal.

4. Therefore, leave to prefer appeal refused. Application stands rejected.

(J.H.Bhatia,J.)